



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278; FCC 22-85; FRID 116788]

Telephone Consumer Protection Act of 1991; Petition for Declaratory Ruling of All About the Message, LLC

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling and order.

SUMMARY: In this document, the Federal Communications Commission (Commission) finds that “ringless voicemail” to wireless phones requires consumer consent because it is a “call” made using an artificial or prerecorded voice and thus is covered by of the 1991 Telephone Consumer Protection Act (TCPA). The Commission denies a request from All About the Message, LLC (AATM) to declare that ringless voicemail is not subject to of the TCPA and the Commission’s implementing rules. The Commission also denies AATM’s alternative request for a retroactive waiver of the Commission’s rules.

DATES: The Declaratory Ruling and Order was effective November 21, 2022.

FOR FURTHER INFORMATION CONTACT: Mika Savir of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at mika.savir@fcc.gov or (202) 418-0384.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Declaratory Ruling and Order, FCC 22-85, CG Docket No. 02-278, adopted on November 14, 2022, and released on November 21, 2022. The full text of this document is available online at <https://www.fcc.gov/document/fcc-declares-ringless-voicemails-are-subject-robocalling-rules>. To request this document in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

SYNOPSIS

1. In this document, the Commission finds that “ringless voicemail” to wireless phones requires consumer consent because it is a “call” made using an artificial or prerecorded voice and thus is covered

by the 1991 Telephone Consumer Protection Act (TCPA). The Commission therefore denies a request from All About the Message, LLC (AATM) to declare that ringless voicemail is not subject to the TCPA and the Commission's implementing rules. The Commission also denies AATM's alternative request for a retroactive waiver of the rules.

2. AATM filed its petition for a declaratory ruling on March 31, 2017, asking the Commission to find that delivery of a voicemail message directly to a consumer's cell phone voicemail is not covered by the TCPA and therefore that AATM does not need consumer consent for the ringless voicemail messages. AATM argued that its ringless voicemail message is not a "call" and therefore the TCPA should not apply. AATM's position was that the ringless voicemail service, and the process by which the ringless voicemail is deposited on a carrier's platform, is neither a call made to a mobile telephone number nor a call for which a consumer is charged and, therefore, is a service that is not regulated.

3. The Commission found that AATM's ringless voicemail message is a call to the consumer's wireless number and prerecorded voice messages sent via this technology are, therefore, subject to the TCPA. The Commission first found that AATM's ringless voicemail constitutes a "call" subject to the TCPA's protections for the same reasons the Commission previously found computer-generated text messages sent to a carrier's text server to be calls for purposes of the TCPA.

4. The Commission concluded previously that text messaging is a call for TCPA purposes when initiated with an autodialer, stating that the TCPA "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to such service." In 2015, the Commission reiterated that finding and found that Internet-to-phone text messages, which are sent to a carrier's server then routed to a consumer's phone, are calls for purposes of the TCPA because callers address these computer-generated text messages to a consumer's wireless telephone number.

5. The Commission concluded that use of the wireless phone number (either as part of an email string or by entering the phone number on a web portal) satisfied the TCPA's requirement that the call be "to any telephone number assigned to a [wireless] service" because the wireless telephone number is a necessary and unique identifier for the consumer. The Commission concluded that "by addressing a message using the consumer's wireless telephone number . . . and sending a text message to the

consumer's wireless telephone number, the equipment dials a telephone number and the user of such technology thereby makes a telephone call to a number assigned to a wireless service as contemplated in section 227(b)(1) of the Act."

6. The Commission stressed that, "[f]rom the recipient's perspective, Internet-to-phone text messaging is functionally equivalent to phone-to-phone text messaging," and that, "the potential harm is identical to consumers; unwanted text messages pose the same cost and annoyance to consumers, regardless of whether they originate from a phone or the Internet." The Commission reasoned that the mere fact that an extra step was involved in dialing a call—in that case merely adding a domain to the telephone number—was not enough to deprive mobile customers of the TCPA's protections as "the effect on the recipient is identical." To hold otherwise "would elevate form over substance, thwart Congressional intent that evolving technologies not deprive mobile consumers of the TCPA's protections, and potentially open a floodgate of unwanted text messages to wireless consumers."

7. AATM's ringless voicemail is identical in function to the Internet-to-phone texting the Commission previously found subject to the TCPA. In the case of Internet-to phone text messaging, the telephone number assigned to the consumer serves as a necessary and unique identifier. Similarly, the telephone number assigned to a consumer's wireless phone and associated with the voicemail account is a necessary and unique identifier for the consumer in the ringless voicemail context. One expert states that the "steps involved in sending a [ringless voicemail] message are substantially the same as the technology used and steps involved in sending both mass text messages and text to email addresses text messages" and that "[f]rom an engineering and technical perspective, this software delivery model that enables multiple remote customers to deliver [ringless voicemail] voice messages en masse to cellular subscribers is precisely the identical software delivery model that mobile messaging companies use to enable their customers to deliver text messages en masse to cellular subscribers." Neither AATM nor any other commenter challenges the description of the technology used to deliver the ringless voicemail messages or the assertion that it is essentially identical to the technology used to deliver Internet-to-phone text messages.

8. This finding is consistent with the ordinary meaning of "call." The TCPA does not define "call" and courts have turned to dictionary definitions to determine its meaning, e.g., Webster's Third New

International Dictionary defines a call as “to communicate with or try to get into communication with a person by a telephone.” Ringless voicemails meet this definition by directing the messages by means of a wireless phone number and by depending on the transmission of a voicemail notification alert to the consumer’s phone (causing the consumer to retrieve the voicemail message). This finding is also consistent with the legislative history and purpose of the TCPA.

9. The Commission also rejected AATM’s argument that ringless voicemail is non-invasive. Consumers cannot block these messages and they experience an intrusion on their time and their privacy by being forced to spend time reviewing unwanted messages in order to delete them. The consumer’s phone may signal that there is a voicemail message and may ring once before the message is delivered, which is another means of intrusion. Consumers must also contend with their voicemail box filling with unwanted messages, which may prevent other callers from leaving important wanted messages. By contending that it is not placing calls, AATM would deny consumers the protection of the TCPA’s consent requirement. The Commission found that, as a matter of both statutory interpretation and policy, such ringless voicemail calls are subject to the TCPA.

10. The TCPA contains “unique protections” for wireless consumers. The Commission was unconvinced that it should undermine the protections against robocalls that the statute provides to consumers by granting a waiver to AATM. AATM has not demonstrated any special circumstances that warrant a waiver or that a waiver of the Commission’s rules is in the public interest. AATM is not precluded from using its ringless voicemail service, but it must do so in accordance with the TCPA.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2022-26673 Filed: 12/13/2022 8:45 am; Publication Date: 12/14/2022]